No. 321

IN THE

Supreme Court of the United States

OCTOBER TERM 1945

PETER A. BUHL, LESTER W. BLUHM, ABEL A. GARFAIN, ISADORE LUPER, HARRY I. HOROWITZ, IRVING C. ROSENBERG, NATHAN ROSENZWEIG, CHARLES B. SALINGER, IRVING N. SOLOWAY and HARRY W. WEINERMAN, on behalf of themselves and all other licensed podiatrists and chiropodists in the State of New York, similarly situated,

Petitioners,

—against—

THE UNIVERSITY OF THE STATE OF NEW YORK, THOMAS J. MANGAN, WILLIAM J. WALLIN, ROLAND B. WOODWARD, WILLIAM LELAND THOMPSON, JOHN LORD O'BRIAN, GEORGE HOPKINS BOND, OWEN D. YOUNG, SUSAN BRANDEIS, C. C. MOLLENHAUER, W. KINGSLAND MACY, JOHN P. MYERS and STANLEY BRADY, as members of the Board of Regents of the University of the State of New York,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GEORGE H. BOND, ESQ.,
Attorney for Board of Regents,
Office & P.O. Address,
1400 State Tower Building,
Syracuse 2, N. Y.

INDEX

Table of Cases Cited:

IN THE

Supreme Court of the United States

OCTOBER TERM 1945

PETER A. BUHL, LESTER W. BLUHM, ABEL A. GARFAIN, ISADORE LUPER, HARRY I. HOROWITZ, IRVING C. ROSENBERG, NATHAN ROSENZWEIG, CHARLES B. SALINGER, IRVING N. SOLOWAY and HARRY W. WEINERMAN, on behalf of themselves and all other licensed podiatrists and chiropodists in the State of New York, similarly situated,

Petitioners,

—against—

THE UNIVERSITY OF THE STATE OF NEW YORK, THOMAS J. MANGAN, WILLIAM J. WALLIN, ROLAND B. WOODWARD, WILLIAM LELAND THOMPSON, JOHN LORD O'BRIAN, GEORGE HOPKINS BOND, OWEN D. YOUNG, SUSAN BRANDEIS, C. C. MOLLENHAUER, W. KINGSLAND MACY, JOHN P. MYERS and STANLEY BRADY, as members of the Board of Regents of the University of the State of New York,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF CASE

The courts of New York State have each refused to petitioners the right to call themselves "doctors" when they are not (R. 23). Their opinions represent the unanimous affirmance by the Appellate Division of the court of original jurisdiction (R. 32, 34), the unanimous refusal

of that court to grant an appeal to the Court of Appeals (R. 36), and the unanimous refusal of the Court of Appeals to permit an appeal to that body (R. 38). Briefs were filed by both parties on each of these proceedings. No one of the petitioners has completed a course in a college or in a professional school which would entitle him to call himself "doctor".

The provisions of the Education Law of the State of New York (§66) make it a misdemeanor for any person with intent to deceive, to falsely represent himself to have received any such degree or credential and further states:

> "nor shall any person append to his name any letters in the same form registered by the regents as entitled to the protection accorded to university degrees, unless he shall have received from a duly authorized institution the degree or certificate for which the letters are registered."

The petitioners claim that they have heretofore called themselves "doctors". If they have done so it is in violation of this section of the New York State law.

The rule of the Regents, adopted at the request of the Podiatry Society of this State, specifically prohibiting podiatrists from using the title "doctor" unless through education they were entitled so to do is set forth in the brief for the petitioner. It is the position of the Regents that such use without the training is deceitful and fraudulent.

As in all professions, the Legislature has from time to time increased the requirements for admission. In 1912, only one year of high school was required of podiatrists; in 1913, two years of high school; 1919, three years; 1921, four years. In 1923 a professional course of one year of at least eight months was required. In 1929 this was raised to a two-year professional course. In 1940 two years of college were added and the professional course lengthened

to three years. This latter course resulted in the awarding of the doctorate. This meant that after 1940 no person could qualify for a license unless he had completed the work leading to a doctor's degree. The petitioners all were licensed under regulations in effect prior to that time. Their academic and professional qualifications vary but they are all short of training which entitled them to hold doctors' degrees. They could, of course, obtain such training by making up their deficiencies in a recognized school.

POINTS

I.

There is no constitutional question involved.

We must confess that we are unable to discover where there is any constitutional question here involved. Under the provisions of the law in this State the petitioners herein involved never had any legal right to call themselves "doctors". Consequently, they never secured any property right, if such be a property right. The fact that they were licensed to practice podiatry never gave them the right to call themselves "doctors".

The only legal way that a person may utilize the title "doctor" in this State is to secure such degree from a recognized school of learning. The reason for this is too evident to merit much discussion. The use of the term "doctor" conveys to the public the implication that the user has the training which entitles him to use this term. The public understands that the medical schools of this State give an extensive training before a person can receive that title and for any one who has not had the training to hold himself out as having had it is fraudulent and deceitful.

The practice of podiatry, sometimes called "chiropody", is defined in the Education Law of the State of New York (§1401, subd. 5) as follows:

"the diagnosis of foot ailments and the practice of minor surgery upon the feet limited to those structures of the foot superficial to the inner layer of the fascia of the foot, the palliative and mechanical treatment of deformities and functional disturbances of the feet, but it shall not confer the right to treat communicable or constitutional diseases of the bones, ligaments, muscles or tendons of the feet or any other part of the body, or to perform any operation on the bones, ligaments, muscles or tendons of the feet involving the use of any cutting instrument or the right to use any anaesthetics other than local."

The people who have been licensed to perform this minor medical service heretofore have had far less training than that required of a doctor. If a person has had the training which a doctor of Podiatry receives it can be expected that he will be fully familiar not only with the limited field ascribed by statute to the podiatrists (or chiropodists) but that he will have general knowledge of blood circulation and many other things. Consequently, when a patient visits a podiatrist and he holds himself out by the use of the title to be a doctor, the patient may well expect of him a broad knowledge, which he does not have if he has not had the training required of a doctor. The reason for the rule of the Regents is quite apparent. It is in the interest and for the protection of the public.

A person who fails to take sufficient courses to qualify him to be a doctor or a person who takes such courses and who fails either in the courses or in the examinations and hence has not achieved the right to call himself "doctor" is not discriminated against because others are able to achieve that right. This would be a queer diagnosis of the process of education if by court fiat both those persons who complete the courses and those who did not must be given the same recognition.

It is claimed that because of the fact that some people with training can achieve the title of "doctor" and some

through lack of training have not been successful in obtaining that rank, two classes are created and that this creates "class legislation". There certainly is a fundamental basis for each and there is no constitutional prohibition thereto.

Cotting v. *Kansas City Stock Yards Co.*, 183 U. S. 79, 110.

Welch Co. v. *New Hampshire*, 306 U. S. 79.

It is a familiar rule of this Court that there is nothing to prevent the establishment of classes if the statute or regulation establishing the same is not arbitrary or capricious.

New York Rapid Transit Corporation v. *City of New York*, 303 U. S. 573.

Packer Corporation v. *State of Utah*, 285 U. S. 105.

Bayside Fish Flour Co. v. *Gentry*, 297 U. S. 422.

People v. *Saltis*, 328 Ill. 494, appeal dismissed 277 U. S. 575.

St. Louis Union Trust Co. v. *State*, 155 S. W. 2d 107, certiorari denied, 314 U. S. 700.

All employment is based upon standards of education and it certainly is not arbitrary or capricious that there be different standards of education. The only distinction between the two classes as claimed by the petitioner here is the difference in training. Those without the training can step into the next class by obtaining it. As a matter of fact, over 226 podiatrists have accomplished just that since the Legislature raised the standards. They now have completed the necessary courses and hold doctors degrees. Petitioners want theirs without so doing. Not having been successful through court action, they caused a bill to be introduced into the 1944 Legislature to accomplish the purposes. (See S. Bill Int. 663; Pr. No. 725; Assembly Bill, Int. 961; Pr. No. 1027). The Legislative Committees

on Education rejected the proposal and the bill never received any consideration.

Where the qualifications for professional licensure or employment in a particular field have been increased and the right of persons already practicing or employed is continued there is no constitutional infringement notwithstanding that persons who might have been licensed or employed at or prior to the time of the change in qualifications were thereafter precluded unless they complied with the new requirements. (*Sperry Hutchinson Co.* v. *Rhodes,* 220 U. S. 502; *Dent* v. *State of West Virginia,* 129 U. S. 114; *Watson* v. *State of Maryland,* 218 U. S. 173; *Williams* v. *Walsh,* 222 U. S. 415; *People* v. *Griswold,* 213 N. Y. 92.)

The petitioners are not denied the right to practice podiatry. Their licenses have been issued and they are practicing. The regulation challenged here in no way affects the right of petitioners to practice podiatry. The regulation under attack by the petitioners tends to guard against deception and fraud. It is a valid exercise of authority as this Court pointed out in *Dent* v. *West Virginia,* supra, when it said:

> "The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud."

CONCLUSION

For the reasons stated above the application for a writ of certiorari should not be granted.

Respectfully submitted,

GEORGE H. BOND, ESQ.,
Attorney for the Board of Regents,
Office and P.O. Address
1400 State Tower Building
Syracuse 2, N. Y.

CHARLES A. BRIND, JR.,
Of Counsel.